IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.84 OF 2004
IN
SUMMARY SUIT NO.3620 OF 2003

Bhimraj J. Gehlot ....Plaintiff

V/s.

Baluram G. Prajapat ....Defendant

Mr.R.S. Champawat for the Plaintiff.

Mr.M.D. Mali for the Defendant.

CORAM : S.J. VAZIFDAR, J.
DATED : 19TH JANUARY, 2005.

P.C. :

1. The suit is filed to recover an amount of Rs.1,60,000/- together with interest on the principal amount of Rs.1.00 lac.

2. Admittedly the Plaintiff had lent and advanced by cheque to the Defendant a sum of Rs.1.00 lac. The cheque is dated 20th May, 2003. Admittedly the Defendant issued a cheque in Plaintiff's favour dated 15th February, 2003 in the sum of Rs.65,000/- towards the part payment of the amounts due. The

cheque was dishonoured. The Plaintiff by his advocate's notice dated 22nd February, 2003 demanded the repayment of the claim with interest. There is no reply to this notice.

3. On merits the defence is that after the receipt of the Plaintiff's advocate note, the Defendant made payment in cash of Rs.65,000/- for full and final settlement of the claim. There is nothing on record to even remotely support the Defendant's case. The case is ex-facie false.

4. The suit is not maintainable as a summary suit in so far as it is based on the cheque by which the Plaintiff lent and advanced money to the Defendant. However, it is clear from the suit that it is also based on the dishonoured cheque. Thus in respect of the amounts other than those covered by the dishonoured cheque, the Defendant is entitled to unconditional leave.

5. In the circumstances, the Summons for Judgment is made absolute to the extent of Rs.65,000/-.

6. Unconditional leave to the Defendant for the

balance amount. The suit is transferred to the list of commercial causes. The Defendant to file the written statement within six weeks from today. Discovery and inspection to be completed within four weeks thereafter. As far as the amount covered by the dishonoured cheque is concerned, there is no defence whatsoever.

. Parties to act on an ordinary copy of this order duly authenticated by the Associate/Court Stenographer of this Court.